

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 13, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:10KD-032

Kauai

Grant of Perpetual, Non-Exclusive Easement to Maxwell Klutke for Access and Utility Purposes, Kapaa Homesteads, 1st and 2nd Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-33:portion 7.

APPLICANT:

Maxwell Klutke, single, tenant in severalty, Kapaa, Hawaii 96746.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kawaihau situated at Kapaa Homesteads, 1st and 2nd Series, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-6-33:portion 7, as shown on the attached map labeled Exhibit A.

AREA:

0.006 acres, more or less.

ZONING:

State Land Use District: Urban  
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Portion encumbered by Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28927, Wayne Y. Tokashiki, Grantee, for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities equipment or topographical features, involving negligible or expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Applicant is the owner of Tax Map Key: (4) 4-6-033:05. The State parcel identified as Tax Map Key: (4) 4-6-033:07 is a sliver of land between his parcel and Kawaihau Road.

Tax Map Key: (4) 4-6-033:07 was a twenty (20) foot railroad right-of-way reserved by the Territory of Hawaii when Land Patent Grant 7670 for Lot 168 was issued under the Special Homestead Agreement 1235 to Adeline Rodregues. Lot 168 was subdivided into seven parcels.

Mr. Maxwell Klutke inherited the property (Parcel 5) from his grandparents in late 2008. Upon refinancing, the mortgage company noticed that he doesn't have an easement thru the State property identified as Parcel 7. DLNR, Kauai Branch records show no application was received from Jonathan & Ruth Kato for an easement request for access and utility purposes.

The house was constructed in 1990 with a driveway. The section of the driveway on the State land has not resulted in any known impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. It is primarily used by the owners for ingress and egress purposes. Staff believes that the proposed easement for access and utility purposes would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from:

State Agencies:

DOH	No environmental health concerns
OHA	No response by suspense date

County Agencies

County Planning	No objections
Public Works	Driveway approach permit required
Dept. of Water	No comments

RECOMMENDATION: That the Board:


1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Maxwell Klutke covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 4-6-033:05, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

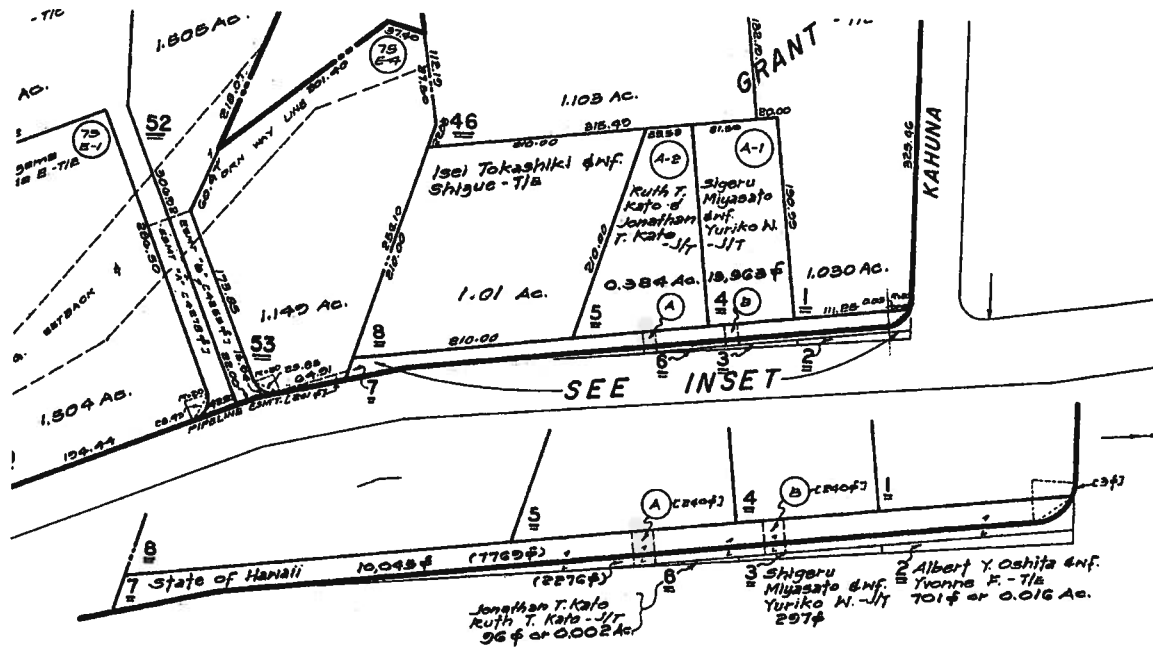
Respectfully Submitted,

  
for Marvin Mikasa  
Land Agent

APPROVED FOR SUBMITTAL:

  
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Laura H. Thiele, Chairperson





TMK: (4) 4-6-33:por. 7 - State land

TMK: (4) 4-6-33:5 owner - Maxwell Klutke

**EXHIBIT "A"**